

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3 -----x

4 INTERWORKS UNLIMITED, INC., a
5 California Corporation,
6 Plaintiff,

7 -against-

8 DIGITAL GADGETS, LLC; a New Jersey
9 limited liability company,
10 Defendant.

11 Case No: 2:17-cv-4983 AB KSx

12 -----x

13 488 Madison Avenue
14 New York, New York

15
16 August 21, 2018
17 10:01 a.m.

18
19 Examination Before Trial of the
20 Defendant by CHARLES TEBELE, pursuant to
21 Notice, before CINDY A. AFANADOR, a Notary
22 Public of the State of New York.
23
24
25



<p>1 myself or my associate could make comments on 2 your changes at trial and it would affect your 3 credibility as a witness.</p> <p>4 MR. LAZARUS: I think you are 5 going over the line in instructing the 6 witness, and now you are counseling the 7 witness on matters that I should be 8 counseling him on, not you.</p> <p>9 If a change needs to be made, the 10 change is going to be made, and the 11 effect is for the judge to instruct the 12 jury, not for you to instruct 13 Mr. Tebele.</p> <p>14 Thank you.</p> <p>15 MR. HSU: I would take it that's 16 your objection, Mr. Lazarus?</p> <p>17 MR. LAZARUS: Lazarus.</p> <p>18 MR. HSU: Lazarus.</p> <p>19 THE WITNESS: He did that 20 yesterday too, to the other two.</p> <p>21 Q. Well, any objection from your 22 attorney, Mr. Lazarus, he's doing this to 23 preserve the record, so when there is a need 24 in the future, then he and I will get into 25 some kind of dispute in front of the judge,</p> <p style="text-align: right;">Page 6</p>	<p>1 A. Yes.</p> <p>2 Q. What is that?</p> <p>3 A. What is the form?</p> <p>4 Q. Correct.</p> <p>5 A. The form is the nature of the 6 articles of how an organization is formed.</p> <p>7 Q. Was it a corporation?</p> <p>8 A. No.</p> <p>9 Q. Was it an LLC?</p> <p>10 A. Yes.</p> <p>11 Q. What is your current position at 12 Digital Gadgets?</p> <p>13 A. President and CEO.</p> <p>14 Q. Do you own this company?</p> <p>15 A. Yes.</p> <p>16 Q. How long have you worked for your 17 company, Digital Gadgets?</p> <p>18 A. About ten years.</p> <p>19 Q. Is it accurate to say that 20 Digital Gadgets was established or formed 21 about ten years ago?</p> <p>22 A. I'm not sure exactly when it was 23 formed, but it might be a little bit more than 24 ten years ago.</p> <p>25 Q. And you don't recall what year?</p> <p style="text-align: right;">Page 8</p>
<p>1 that's why he's doing this.</p> <p>2 Did you take any medication in 3 the last 24 hours that would prevent you from 4 giving your testimony today?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 Other than Charlie Tebele, have 8 you ever used any other name in the past?</p> <p>9 A. Charles.</p> <p>10 Q. Any other names?</p> <p>11 A. No.</p> <p>12 Q. What's your current occupation?</p> <p>13 A. Entrepreneur.</p> <p>14 Q. Excuse me, I didn't catch that.</p> <p>15 A. Entrepreneur.</p> <p>16 Q. Entrepreneur.</p> <p>17 Do you have an employer?</p> <p>18 A. Yes.</p> <p>19 Q. Who is that person?</p> <p>20 A. It's not a person.</p> <p>21 Q. When you say "it's not a person," 22 what is the employer? Who's the employer?</p> <p>23 A. Digital Gadgets; it's an entity.</p> <p>24 Q. Do you know the form of this 25 business entity?</p> <p style="text-align: right;">Page 7</p>	<p>1 A. I don't recall what year.</p> <p>2 Q. Okay.</p> <p>3 Other than officer and owner of 4 Digital Gadgets, are you a director?</p> <p>5 Strike that.</p> <p>6 Are you the sole managing member 7 of Digital Gadgets?</p> <p>8 A. I am the managing member.</p> <p>9 Q. Are you familiar with a company 10 called Techpoint, LLC, one word, 11 T-E-C-H-P-O-I-N-T?</p> <p>12 A. Yes.</p> <p>13 Q. And do you know any business 14 affiliation between Techpoint, LLC and Digital 15 Gadgets?</p> <p>16 A. Yes.</p> <p>17 Q. And what is that business 18 affiliation?</p> <p>19 A. Techpoint, LLC sources certain 20 products for Digital Gadgets and serves as an 21 agency for sourcing products.</p> <p>22 Q. When you say "sourcing products," 23 can you explain to me what "sourcing" means?</p> <p>24 A. Means finding sources that have 25 products that may be applicable for sale by</p> <p style="text-align: right;">Page 9</p>

<p>(Tebele Exhibit 3, Document bearing Bates stamp Interworks 7, marked for identification.)</p> <p>Q. This letter apparently was written by Thomas Carulli, supposedly a lawyer working for this firm. I'm looking at the letterhead; Kaplan, Massamillo & Andrews. Have you ever seen this document?</p> <p>A. Yes.</p> <p>Q. Did you hire this law firm to write this letter to Interworks?</p> <p>A. Yes.</p> <p>Q. And let's look at the first paragraph.</p> <p>Says "Dear Mr. Lu, we represent Digital Gadgets, LLC. This is to place you on notice that Interworks has violated the exclusive right granted DG," that's Digital Gadgets, "to sell Interworks products to and through QVC, moreover, at a price less than offered by Digital Gadgets, resulting in significant and irreparable harm to Digital Gadgets."</p> <p>A. Yes, it was terrible.</p> <p>Q. There are two issues raised by</p> <p style="text-align: right;">Page 38</p>	<p>multiple occasions, I spoke to QVC. I mean this was a heavy issue, this wasn't a light issue and we would never, as our company policy, sell something that someone else makes, to then have that company go and compete with us on the same thing.</p> <p>Q. Well, that's fair.</p> <p>So Chris Mitchell reported this to you; what did he tell you, if anything, that you recall pertaining to this exclusive right?</p> <p>A. Look, I had many conversations with Chris Mitchell and with Eric, but what I will say is Interworks was in a jam, we helped them, and explicit in the help was this exclusive, which was being honored for a time, but then at some point, Interworks decided to go rogue and go behind our backs, so it was not just implied, it was the tone of the entire relationship. And, moreover, we were discussing further exclusive and further accounts, so it wasn't that it was this one little thing, it was beyond that.</p> <p>At some point, Interworks just decided that they were gonna not honor it.</p> <p style="text-align: right;">Page 40</p>
<p>this paragraph. One, the first one was the exclusive right. You don't recall seeing any written documents or written agreements signed by Interworks and Digital Gadgets pertaining to this exclusive right?</p> <p>A. I don't know about a written agreement, however there is a certain agreement without question between Interworks and Digital Gadgets that when Digital Gadgets was selling those goods to QVC, which Interworks was stuck with and QVC canceled their orders with, that Digital Gadgets would fill Interworks' shoes as the exclusive partner, there's no doubt about that.</p> <p>Q. When you say "there's no doubt about that," you know, what proof do you recall?</p> <p>MR. LAZARUS: Objection to the form of the question.</p> <p>Q. Let me ask you this: When you say there's no doubt about this exclusive right, have you ever seen any e-mails sent by Eric Lu?</p> <p>A. I've seen e-mails, I was on conversations, I spoke to Chris Mitchell on</p> <p style="text-align: right;">Page 39</p>	<p>Q. Okay.</p> <p>To your knowledge, is --</p> <p>A. Which caused us a tremendous amount of lost work and time and reputation.</p> <p>Q. Do you know if Interworks is currently selling hoverboards to QVC?</p> <p>A. I don't understand the question.</p> <p>Q. To your personal knowledge, is Interworks selling hoverboards to QVC now?</p> <p>A. At this moment, I don't know. Are they in business?</p> <p>Q. Which party is in business?</p> <p>A. Is Interworks still in business?</p> <p>Q. That's why I'm here.</p> <p>A. I don't understand.</p> <p>Q. Well, you know, maybe your attorney can ask my client that question two weeks from now.</p> <p>A. Okay. I don't know if they are selling it. I don't even know if they are in business. I'm hearing all kinds of things in the trade about deceptive things that they are doing, so I don't know if they are there, they are not there, they are selling, they are not selling, I don't know.</p> <p style="text-align: right;">Page 41</p>

<p>1 Q. You heard something about 2 Interworks going out of business? 3 A. I'm speculating. I'm wondering. 4 I'm asking you. 5 Q. Unfortunately, I can't give you 6 that answer. 7 But your attorney can ask my 8 client a couple weeks from now, two, three 9 weeks from now. 10 A. Okay. I just don't wanna -- you 11 are asking me if they are selling something, I 12 don't even know if they are in business, so 13 I'm trying to -- 14 Q. All I'm trying to get -- 15 A. How would I know what they are 16 doing? 17 Q. Did you hear from QVC that they 18 are still selling to QVC? 19 A. It's not something that I 20 discussed with QVC on a daily basis. 21 Q. Okay. That's a good answer. 22 The -- if you look at the second 23 paragraph, a reference of insurance coverage 24 was mentioned. Do you know why lack of 25 insurance coverage was an important issue at</p> <p style="text-align: right;">Page 42</p>	<p>1 these hoverboards supplied by Interworks? 2 A. Doesn't the letter state that? 3 Q. Yes, it does say that. I mean, 4 I'm asking you -- well, let me try to ask 5 another question. 6 When you had this letter written 7 to Interworks, did Interworks promptly show 8 you sufficient insurance coverage to alleviate 9 your such concern? 10 A. Are you saying -- are you asking 11 me if we had insurance I would still go and 12 pay money to hire a lawyer and write a letter 13 that we didn't have insurance? 14 Q. No. The question is, after you 15 sent this letter, after, did you or anybody 16 else at Digital Gadgets receive satisfactory 17 explanations from Interworks? 18 A. I know that there was attempt to 19 resolve the insurance issue by Interworks. I 20 don't know if it was quote/unquote 21 satisfactory, but I do know that there was 22 certain actions taken as a result of this 23 letter to mitigate what -- maybe what 24 Interworks felt it needed to provide. 25 Q. Subsequent to sending this</p> <p style="text-align: right;">Page 44</p>
<p>1 the time when this letter was written? 2 A. Why insurance is important? 3 Q. Why lack of insurance coverage 4 was an important issue? 5 A. It's a requirement of doing 6 business, and part of the product -- when QVC 7 approves a product for sale, there are certain 8 requirements. If insurance on that product is 9 part of the approval, it becomes part of 10 the -- you can't separate the insurance from 11 the product. If QVC approves the product that 12 has this cup with this holder with this lid, 13 and you take off the lid, it's no longer the 14 cup. 15 You follow what I'm saying? 16 Q. Yes, I follow. 17 A. So if the board doesn't have the 18 insurance and it was approved with the 19 insurance, then the lack of the insurance 20 makes the product not what it was represented 21 to be. 22 Q. Okay. 23 The -- at the time, did you, I 24 mean Digital Gadgets, have serious concern on 25 lack of insurance coverage with respect to</p> <p style="text-align: right;">Page 43</p>	<p>1 letter, did you realize that it was actually a 2 non-issue? 3 A. No. 4 Q. Are you aware Digital Gadgets had 5 to purchase insurance subsequent to sending 6 this letter to Interworks? 7 A. Am I aware that Digital Gadgets 8 had to purchase -- if Interworks didn't solve 9 the problem, then Digital Gadgets would have 10 had to purchase insurance. I don't know the 11 dates and times, but if we had to do something 12 to mitigate damages, we would have done that 13 based on our relationship with QVC. 14 Q. Right, QVC would have required 15 you, meaning your company, to provide that 16 coverage, if Interworks failed to provide one, 17 right? 18 A. If it was provideable (sic) by 19 us. It's not like you could just go out and 20 like buying a pack of gum in the store, not 21 like saying, okay, you don't have it, I'll do 22 it, it's an intricate piece of equipment that 23 many insurance companies will not insure. 24 Q. Do you personally involve in 25 obtaining or procuring such insurance coverage</p> <p style="text-align: right;">Page 45</p>

<p>1 Q. The question, very simple: Did 2 you know Digital Gadgets had to submit samples 3 to QVC for testing and approval before you 4 started selling them?</p> <p>5 A. That's not true.</p> <p>6 Q. Not true?</p> <p>7 A. No. In this case, because 8 Interworks purported to sell us the unit that 9 was already approved by QVC, QVC allowed us to 10 sell it based on our reputation and vouching 11 for the fact that it was the same model, so we 12 began to sell it without submitting a sample. 13 And only after five months later when we 14 needed to submit a sample for a new program 15 and new orders did we then submit them a 16 sample, and then determined that what we were 17 selling them all along was fraudulent.</p> <p>18 Q. You are 100 percent sure about 19 that?</p> <p>20 A. I'm sure of what I just said.</p> <p>21 Q. Okay.</p> <p>22 That's very good answer. I'm 23 just --</p> <p>24 A. That doesn't mean that's 100 25 percent of what occurred.</p> <p style="text-align: right;">Page 82</p>	<p>1 A. That's what it says.</p> <p>2 Q. Okay.</p> <p>3 Does it say that the -- by the 4 way, what is the products described on this 5 report?</p> <p>6 A. (No response.)</p> <p>7 Q. Description on top, you see Chic 8 High Roller Self Balancing Hoverboard W? I 9 don't know what that "W" means. Do you know, 10 W slash --</p> <p>11 A. What are you asking me?</p> <p>12 Q. I'm asking if you know what that 13 means? I have no idea what that means. What 14 the W at the end and slash, what does that 15 mean?</p> <p>16 A. Probably is truncated that 17 there's some words after that, but it doesn't 18 pick up on the form.</p> <p>19 Q. The reason I was asking you, 20 because I don't know what that means.</p> <p>21 If you go through this report, it 22 seems like the samples submitted by Interworks 23 to QVC passed the testing?</p> <p>24 A. Yes.</p> <p>25 Q. Is there anything -- you see the</p> <p style="text-align: right;">Page 84</p>
<p>1 Q. Well, that's based on your 2 recollection that's what happened, right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay.</p> <p>5 MR. HSU: Let's mark this as 8. 6 (Tebele Exhibit 8, Document 7 bearing Bates stamps Interworks 212 8 through Interworks 221, marked for 9 identification.)</p> <p>10 Q. Exhibit 8 is a computer generated 11 form on top of the first page says QVC, QA 12 sample, evaluation report?</p> <p>13 A. Correct.</p> <p>14 Q. And have you ever seen this 15 entire report?</p> <p>16 A. I have seen this form. I don't 17 know if I've seen this report before, but I'm 18 familiar with the form.</p> <p>19 Q. And if you look at those days, 20 probably the seventh or eighth line from the 21 top, indicates that the sample evaluation due 22 date, pick due date, requested due date, look 23 at those days, do those tell you that the 24 samples were submitted to QVC by Interworks in 25 early October?</p> <p style="text-align: right;">Page 83</p>	<p>1 second page of this exhibit, the Bates number 2 Interworks 213 in the midsection of the page 3 where it says battery identification, four 4 battery packaging, four general electrical 5 requirement test, Interworks passed all of 6 those things, right?</p> <p>7 A. I don't know what -- I mean you 8 are making a statement, I guess, yeah.</p> <p>9 Q. So you were saying that 10 Interworks -- I'm trying to understand what 11 your claim is. One of your claims is that 12 Interworks fraudulently --</p> <p>13 A. Interworks had got this board 14 approved.</p> <p>15 Q. Right.</p> <p>16 MR. LAZARUS: Referring to?</p> <p>17 A. Interworks 212.</p> <p>18 Q. This is 8.</p> <p>19 A. The item on this Exhibit Number 8 20 was approved for sale by QVC.</p> <p>21 Q. And QVC --</p> <p>22 A. And you want me to continue to 23 answer, make it easier?</p> <p>24 Q. Sure.</p> <p>25 A. Interworks sold us this board,</p> <p style="text-align: right;">Page 85</p>

1 (Tebele Exhibit 16, Document
2 bearing Bates stamp Digital gadgets 35,
3 marked for identification.)
4 Q. 16, there is a short e-mail on
5 top from Eric Lu to Chris Mitchell in
6 December, specifically on December 21, 2016.
7 It says "Chris, see my comments
8 below in red. I'll give you a call shortly."
9 In response to Chris Mitchell's
10 e-mail to Eric Lu dated the same day earlier
11 than that, well, yes, a little earlier than
12 3:04 a.m., was 9:26 a.m. in the morning, here
13 by the way, have you received this e-mail from
14 Chris Mitchell?
15 A. Did I receive this e-mail from
16 Chris Mitchell?
17 Q. Right.
18 Did he subsequently forward it to
19 you?
20 A. I don't remember.
21 Q. And says -- Chris Mitchell says
22 here "Eric" starting from the second paragraph
23 "current order QVC isn't going to be able to
24 resolve the lithium battery reissue until next
25 month."

Page 114

1 Are you aware of such issue
2 existing in December of 2016?
3 A. That's a different issue. That's
4 a different lithium battery issue than what we
5 are talking about with the QA.
6 Q. Right.
7 And you say is a different issue?
8 A. It has nothing to do with the QA.
9 Q. Okay.
10 And was this around the time when
11 Chris Mitchell was negotiating with Eric on
12 the price terms along with the other terms for
13 the sale of the hoverboards?
14 A. It appears to be.
15 Q. And when Chris Mitchell
16 mentioned -- you see down below like one, two,
17 three, four, fourth bullet point, if you look
18 at the second one?
19 A. Yep.
20 Q. Received exclusive agreement to
21 supply chip listen board to QVC for 2017 and
22 then Eric's comment is yes, we can put this
23 agreement to you, but let's have our meetings
24 and see it and that's the trade show, right?
25 A. Yes.

Page 115

1 Q. And discuss our partnership
2 further?
3 A. Yep.
4 Q. So you did discuss, meaning your
5 company, did discuss this exclusive agreement
6 with Eric Lu?
7 A. Yes.
8 Q. At the trade show, and what was
9 your recollection on Eric Lu's response or
10 anything that he said in Las Vegas -- when you
11 met Eric Lu, did he agree to give that
12 exclusive deal to you guys?
13 A. There was no doubt that he agreed
14 that as long as we had inventory in place that
15 we remained the exclusive partner. We would
16 never buy somebody else's goods for them to go
17 sell them to the same customer behind our
18 back. The discussion further was we were
19 discussing other accounts to extend the
20 exclusive to.
21 Q. Did you also at Las Vegas discuss
22 the payment terms such as consignment?
23 A. It's possible.
24 Q. But you don't remember sitting
25 here?

Page 116

1 A. Again, there was a sequence of
2 events and a lot of conversations. I don't
3 know what conversation was at CES versus on
4 the phone, but it was a fluid situation.
5 (Tebele Exhibit 17, Document
6 bearing Bates stamp Digital Gadgets 80,
7 marked for identification.)
8 Q. Next one is 17. Have you ever
9 seen this certificate of liability insurance?
10 A. Possibly.
11 Q. You see towards the bottom left
12 underneath two words certificate, Digital
13 Gadgets, LLC and that's your company, right?
14 A. Yes.
15 Q. On top -- well, it's not very
16 top, it's like ninth or tenth or twelfth line
17 from the top, you see under the insured
18 Interworks Unlimited, Inc.?
19 A. Yes.
20 Q. Was printed there, so the insured
21 of this policy was Interworks?
22 A. Yes.
23 Q. And your company was made as an
24 additional insured?
25 A. Yes.

Page 117

<p>1 submitted this certificate to QVC around the 2 time Digital Gadgets received this from 3 Interworks? 4 A. What's the question again? 5 Q. Do you know if Digital Gadgets 6 ever submitted this certificate of liability 7 insurance to QVC ever? 8 A. I don't know. 9 (Tebele Exhibit 20, Document 10 bearing Bates stamps Digital Gadgets 244 11 through Digital Gadgets 247, marked for 12 identification.) 13 Q. 20 has a number of pages. 14 These documents were produced by 15 Digital Gadgets. 16 If you see the second e-mail from 17 the top on Digital Gadgets 244, this e-mail 18 was sent by Chris Mitchell to Eric, presumably 19 Eric Lu, and you were cc'd on it. Do you see 20 that? 21 A. Yep. 22 Q. And Chris Mitchell first said 23 "Eric understood about wanting the boards 24 back. We were honoring the consignment backup 25 agreement per our conversation. But if that's</p> <p style="text-align: right;">Page 126</p>	<p>1 approved from my factor." 2 Did Eric Lu write all of these 3 responses in bold printed form? 4 A. I don't know, looks like it. 5 Q. And here he was complaining to 6 you guys that if you had been approved by my 7 vendor, I would have given this consignment 8 backup agreement to you guys at the time this 9 e-mail was sent to them, to Eric Lu, to your 10 recollection, Interworks' factor never 11 approved your company on this credit line of 12 \$1 million, right? 13 A. I have no idea. It looks to be 14 he shipped it, bought approval from his factor 15 and maybe he was in trouble or something. I 16 don't know what -- I don't know what -- I 17 don't know what the inner workings between him 18 and his factor are, but we don't have any 19 obligation as Digital Gadgets to satisfy his 20 factor. His factor relationship is between 21 him and his factor. 22 Q. If you look down below, 23 there's -- it seems like there is a 24 spreadsheet prepared by Chris Mitchell to 25 Eric Lu. If you can help me go over the</p> <p style="text-align: right;">Page 128</p>
<p>1 no longer an option for you, we can send back 2 the remaining boards." 3 What is the consignment backup 4 agreement Chris Mitchell was talking about 5 here, if you know? 6 A. Basically, that there were, 7 throughout the negotiations, like I said, it 8 was fluid and what they agreed to was rather 9 than shipping the boards back and forth 10 between Interworks and Digital Gadgets and 11 having them sit in one warehouse or another, 12 since they were only for QVC that we would pay 13 them based on when they were sold. So that's, 14 I mean, call it a consignment agreement, but 15 it's not a very technical term. Consignment 16 agreement would basically mean to me we would 17 pay for the goods per specific agreement as 18 they were sold. 19 Q. Okay. 20 And then the -- see there's some 21 bold printed lines or words starting from an 22 arrow pointing to the left, "I have honored 23 everything" that -- "everything I've said. I 24 told you guys I would give you 25 terms/consignment if you guys would get</p> <p style="text-align: right;">Page 127</p>	<p>1 second page of the document, where you can see 2 not this page, can you just briefly go to a 3 second page? 4 A. Yes. 5 Q. Second page on top to the right, 6 you see the total received number is 10,608 7 units? 8 A. Yes. 9 Q. Is that consistent with your 10 recollection of how many units of 11 hoverboards -- 12 A. I previously answered I'm not 13 sure how many hoverboards were received, but 14 if this e-mail states -- the e-mail stands on 15 its own. The statement is what it is. 16 Q. Okay. 17 But you mention about computer 18 data and software. If you have to retrieve 19 this information or spreadsheet from your 20 computer you would be able to do that, right? 21 A. Yes. 22 Q. After you received these e-mails 23 from Chris Mitchell and Eric Lu, did you 24 remember -- did you remember you had a meeting 25 or a couple of meetings with Chris Mitchell?</p> <p style="text-align: right;">Page 129</p>